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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 SEAN BROOKS SKIRLAW,  
12 Plaintiff,

13 v.

14 JOHN FORRESTER,  
15 Defendant.

Case No. C08-5398RJB-KLS

ORDER REGARDING  
PLAINTIFF'S AMENDED  
COMPLAINT

16  
17 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
18 636(b)(1), Local Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is  
19 before the Court on plaintiff's filing of a first amended complaint. (Dkt. #19). After reviewing plaintiff's  
20 amended complaint, defendant's response thereto and the balance of the record, the Court finds and  
21 orders as follows:

22 On August 5, 2008, the Court issued an order (Dkt. #8) directing service of plaintiff's original  
23 complaint (Dkt. #6). On October 2, 2008, defendant filed his answer to that complaint. (Dkt. #17). On  
24 October 6, 2008, the Court issued a pretrial scheduling order, setting forth the deadlines for completing  
25 discover in this matter, filing dispositive motions and filing a joint status report. (Dkt. #18). On October  
26 15, 2008, plaintiff filed a proposed first amended complaint (Dkt. #19), and a memorandum of record in  
27 support of his filing thereof (Dkt. #20).

28 On October 28, 2008, defendant filed a response to plaintiff's first amended complaint. (Dkt. #21).

1 In his response, defendant requests that the Court strike plaintiff's first amended complaint, because he  
2 did not seek written consent from defendant or request leave from the Court prior to filing that complaint  
3 as required by Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 15(a). But this is not actually what that  
4 rule provides. Rather, Fed. R. Civ. P. 15(a) states in relevant part:

5 **(a) Amendments Before Trial.**

6 **(1) *Amending as a Matter of Course.*** A party may amend its pleading once as a  
7 matter of course:

8 (A) before being served with a responsive pleading; . . .

9 . . .

10 **(2) *Other Amendments.*** In all other cases, a party may amend its pleading only with  
11 the opposing party's written consent or the court's leave. The court should freely give  
12 leave when justice so requires.

13 In his memorandum of record, plaintiff states that while defendant filed a copy of the answer with  
14 the Court on October 2, 2008, a copy it was sent to plaintiff at the wrong mailing address, the Washington  
15 Corrections Center, located in Shelton, Washington. Plaintiff states, however, that the correct mailing  
16 address for him at the time was, and still is, the Stafford Creek Corrections Center, located in Aberdeen,  
17 Washington. See (Dkt. #16-#17). Plaintiff further states that he did not actually physically receive a  
18 copy of the answer from defendant until October 14, 2008, or four days after he signed and submitted his  
19 first amended complaint to the Court. See (Dkt. #19-#20).

20 Defendant does not dispute plaintiff's version of the above events. Indeed, defendant makes no  
21 mention of the issue of service anywhere in his response. The Court, therefore, finds the record supports  
22 plaintiff's assertion that he did not receive – i.e., was not served with – a copy of the answer until after he  
23 already had submitted his first amended complaint for filing with the Court. As such, plaintiff did not  
24 have to obtain consent from defendant or leave from the Court prior to filing his first amended complaint,  
25 and, accordingly, the Court accepts it for filing pursuant to Fed. R. Civ. P. 15(a)(1)(A).

26 Defendant argues that at most in his first amended complaint, plaintiff has somewhat changed the  
27 wording of his claims and damage requests, and does not raise any legitimate new causes of action. That  
28 complaint, defendants thus assert, is merely a restatement of the same factual allegations – albeit in a less  
specific manner than the original complaint – and issues in slightly different language. Be that as it may,  
the fact is that given the uncontested procedural history outlined above, plaintiff is entitled to amend his

1 original complaint once as a matter of course here.

2 Pursuant to Fed. R. Civ. P. 15(a)(2), “[u]nless the court orders otherwise, any required response to  
3 an amended pleading must be made within the time remaining to respond to the original pleading or  
4 within 10 days after service of the amended pleading, whichever is later.” Here, the time remaining in  
5 which to respond to plaintiff’s original complaint has passed, and it appears that seven days already have  
6 passed since defendant received notice of the filing of the first amended complaint. See (Dkt. #21). As  
7 such, defendant shall file an amended answer to the first amended complaint by **no later than November**  
8 **13, 2008**, or ten days after the date of this Order.

9 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendant.

10 DATED this 3rd day of November, 2008.

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14 Karen L. Strombom  
15 United States Magistrate Judge  
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